ORDINANCE NO. 2003 - 052

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PROVIDING FOR A SHORT TITLE, PURPOSE, APPLICABILITY, AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROTECTION OF THE CONSERVATION LANDS; PROVIDING FOR COMPENSATION FOR INTERESTS IN CONSERVATION LANDS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE PALM BEACH COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the citizens of Palm Beach County voted on March 12, 1991, to tax themselves to provide $100,000,000 for the acquisition, permanent protection and preservation of Environmentally Sensitive Lands; and

WHEREAS, the citizens of Palm Beach County voted on March 9, 1999, to tax themselves to provide $150,000,000 for the acquisition, permanent protection, and preservation of Conservation Lands; and

WHEREAS, the Board of County Commissioners has acquired nearly 30,000 acres of lands for long-term conservation using these funds; and

WHEREAS, the Board of County Commissioners has determined that the public interest is best served by these lands being preserved and managed as preserves or for conservation forever and that the best means of ensuring permanent preservation is to provide multiple layers of protection for conservation lands through third party conservation easements, deed restrictions, shared title, and a Charter Amendment; and

WHEREAS, the Board of County Commissioners has determined that the public interest may be served in certain circumstances by allowing for the conveyance of an interest in these lands when such conveyance results in an exceptional benefit to the Conservation Lands Program; and

WHEREAS, the Board of County Commissioners has determined that an exceptional benefit to the Conservation Lands Program can only be ensured by requiring that any proposed conveyance of an interest in conservation lands be offset by the acquisition, transfer into the Conservation Lands Program, and permanent preservation of higher quality environmentally sensitive lands, greenways or open space, or water resource lands of greater acreage or more suitable location than the interest in conservation lands conveyed; and

WHEREAS, the Board of County Commissioners has determined that the public interest will be served by establishing a public process and procedure for approving the conveyance of an interest in Conservation Lands when such conveyance results in an exceptional benefit to the Conservation Lands Program.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. SHORT TITLE, PURPOSE, APPLICABILITY, AUTHORITY:

1.01 This Ordinance shall be known as the "Conservation Lands Protection Ordinance."

1.02 It is the intent of this Ordinance to recognize that the public interest is best served when the Conservation Lands as defined in subsection 2.01 are allowed to remain as conservation lands in perpetuity but to also recognize that the public interest may be served in certain circumstances in which the conveyance of an Interest in Conservation Lands results in an exceptional benefit to the Conservation Lands Program as defined in subsection 2.03.

1.03 It is the intent of this Ordinance to recognize that the conveyance of Interest in Conservation Lands that fail to result in an exceptional benefit to the Conservation Lands Program as defined in subsection 2.03 are not in the public interest and shall be prohibited.

1.04 It is the intent of this Ordinance to provide a process and guidelines whereby the Board of County Commissioners can evaluate and determine in a public forum whether a potential conveyance of an Interest in Conservation Lands provides an exceptional benefit to the Conservation Lands Program prior to any disposition of the Conservation Lands.

1.05 The provisions of this Ordinance apply to the Conservation Lands as defined in subsection 2.01.

1.06 It is the intent of the Board of County Commissioners that this Ordinance be liberally construed to ensure the long term protection and preservation of Conservation Lands.

1.07 This Ordinance is adopted under the authority of Chapter 125, Florida Statutes (F.S.), and the Charter of Palm Beach County. The Palm Beach County Department of Environmental Resources

Management (ERM) shall, through the authority of the County Administrator, administer the requirements of this Ordinance.

Section 2. DEFINITIONS:

2.01 **Conservation Lands** are those lands acquired in whole or in part from funds obtained from the bond issues authorized by the Environmentally Sensitive Lands Referendum (March 12, 1991) or the Land Acquisition for Conservation Purposes Referendum (March 9, 1999), as well as lands donated for conservation purposes.

2.02 **Interest in Conservation Lands** means a fee simple interest, easement, right-of-way, or an authorization of a use not initially intended for the property acquired as conservation lands. Uses not initially intended include, but are not limited to, utility and roadway activities.

2.03 **Exceptional Benefit to the Conservation Lands Program** means that the proposed conveyance of an Interest in Conservation Lands is offset by the acquisition, transfer into the Conservation Lands Program, and preservation of higher quality land of greater acreage. Highest quality land shall be conveyed at a ratio of up to 5 acres transferred into the Conservation Lands program to one acre conveyed out of the program. The land to be acquired to offset the Interest in Conservation Lands must meet the criteria for acquisition under Resolution 99-1073 and must satisfy the purposes for which the affected Conservation Lands were originally acquired. If the affected Conservation Lands are environmentally sensitive, the unique location of the Conservation Lands being considered for conveyance must be analyzed in comparison to the lands offered as compensation pursuant to Section 4 to determine that the land offered as compensation is of equal or greater value for conservation purposes than the land being considered for conveyance. Quality of habitat for land offered as compensation for Environmentally Sensitive Lands as defined in subsection 5.01 of Resolution 99-1073 shall be determined by the rarity and diversity of native ecosystems, function of the habitat in terms of its ability to support wildlife, adjacency to or connectivity between existing Conservation Lands, and the presence of species

listed as endangered, threatened, rare, or of special concern by the U.S. Fish and Wildlife Service, the Florida Wildlife Conservation Commission, the Florida Committee on Rare and Endangered Plants and Animals or the Florida Department of Agriculture. If the affected Conservation Lands are not Environmentally Sensitive Lands, as defined in subsection 5.01 of Resolution 99-1073, the land offered for compensation pursuant to Section 4 shall satisfy or exceed the purposes served by the affected Conservation Lands according to the acquisition criteria in subsections 5.02 and 5.03 B and C of Resolution 99-1073.

Section 3. PROTECTION OF THE CONSERVATION LANDS:

3.01 An individual, organization, or governmental entity including County departments may request an Interest in Conservation Lands by making a written request to the Board of County Commissioners through ERM.

3.02 The request shall:

A. Provide the public purpose for which the Interest in Conservation Lands is needed.

B. Provide a history and discussion of the alternatives to requesting the specific Interest in Conservation Lands and demonstrate with supporting documentation why other alternatives are not acceptable.

C. Demonstrate with supporting documentation that the requested conveyance of an Interest in Conservation Lands is the minimum acreage necessary, impacts the lowest quality habitat, and avoids habitat fragmentation, noise, and light pollution to the adjacent unaffected Conservation Lands.

D. Demonstrate with supporting documentation, the substantial public need for the particular Interest in Conservation Lands requested, why the competing public use must occur at that location, and how the proposed Interest in Conservation Lands will be offset to ensure an Exceptional Benefit to the Conservation Lands Program.

E. Demonstrate that the Interest in Conservation Lands will not affect the continued survival of any species listed as endangered, threatened, rare, or of special concern by the U.S. Fish and Wildlife

Service, the Florida Wildlife Conservation Commission, the Florida Committee on Rare and Endangered Plants and Animals or the Florida Department of Agriculture.

F. Demonstrate that the proposed compensation pursuant to Section 4 provides an Exceptional Benefit to the Conservation Lands Program.

3.03 Prior to any action by the Board of County Commissioners regarding the conveyance of an Interest in Conservation Lands, and for as long as these committees or their successors are constituted, the Conservation Lands Acquisition Selection Committee (CLASC) and the Natural Areas Management Advisory Committee (NAMAC) shall review the proposed compensation pursuant to Section 4 to determine whether it meets the criteria for acquisition under Resolution 99-1073 and meets the purposes for which the affected Conservation Lands were initially acquired, and whether the proposed compensation pursuant to Section 4 provides an Exceptional Benefit to the Conservation Lands Program. These comments and recommendations shall be provided to ERM no later than 90 days after receipt by each Committee through its respective chair of the written request under consideration. In addition, if the affected Conservation Lands are within municipal boundaries, the request for conveyance of an Interest in Conservation Lands shall be submitted for review by that municipality. The municipality shall have 90 days from receipt of the request by its mayor or manager to provide comments and recommendations to ERM. ERM shall provide copies of the comments and recommendations received from CLASC, NAMAC, and the applicable municipality to the Board of County Commissioners at the public hearing where the request for an Interest in Conservation Lands is being considered.

3.04 An affirmative vote of five (5) members of the Board of County Commissioners shall be required to conceptually approve the conveyance of an Interest in Conservation Lands, which conceptual approval shall be by resolution following:

A. Receipt and consideration of comments and recommendations by ERM, CLASC, NAMAC, and the municipality, as applicable; and

B. A public hearing, duly advertised, to provide for public input; and

C. Receipt of a written commitment providing for compensation pursuant to Section 4, and incorporation of the written commitment into the resolution.

3.05 In approving the resolution, the Commission must determine that:

A. There is a substantial public need for the conveyance of an Interest in Conservation Lands and that there is no acceptable alternative to meet the need other than the use of Conservation Lands; and

B. That the requested conveyance of an Interest in Conservation Lands is the minimum acreage necessary, impacts the lowest quality habitat, and avoids habitat fragmentation, noise, and light pollution to the adjacent unaffected Conservation Lands; and

C. That the proposed compensation pursuant to Section 4 meets the relevant criteria for acquisition and is sufficient in terms of acreage, location and quality to ensure that the proposed conveyance will result in an Exceptional Benefit to the Conservation Lands Program; and

D. That the proposed conveyance of an Interest in Conservation Lands that are Environmentally Sensitive does not affect the continued survival of any species listed as endangered, threatened, rare, or of special concern by the U.S. Fish and Wildlife Service, the Florida Wildlife Conservation Commission, the Florida Committee on Rare and Endangered Plants and Animals or the Florida Department of Agriculture.

E. The findings in subsections 3.05 A through D shall be expressly set forth along with the written commitment providing for the compensation pursuant to Section 4 in the resolution conceptually authorizing the conveyance of an Interest in Conservation Lands for the public need stated therein.

3.06 An approval under this Ordinance shall not authorize the actual transfer by deed, easement or other applicable instrument, of an Interest in Conservation Lands. The actual transfer shall require a separate submittal for consideration by the Board of County Commissioners, at one of its regular meetings, of a purchase and sale agreement or other instrument capable of conveying the requested Interest. The individual, organization, or governmental entity requesting an Interest in Conservation Lands shall be responsible for obtaining any other approval or permit needed or desired in connection with the request, and an approval under this Ordinance does not guarantee the issuance of any such approval or permit. The provisions of this subsection 3.06 shall be expressly set forth in any resolution adopted by the Board of County Commissioners pursuant to subsections 3.04 and 3.05.

Section 4. COMPENSATION FOR INTERESTS IN CONSERVATION LANDS:

4.01 In order to ensure that the conveyance of an Interest in Conservation Lands results in an Exceptional Benefit to the Conservation Lands Program, the proposed conveyance must be offset by the acquisition, transfer into the Conservation Lands Program, and preservation of land that satisfies the criteria of subsection 2.03 of this Ordinance.

4.02 The net value of the land acquired to compensate for the requested Interest in Conservation Lands shall exceed the current value of the Interest in Conservation Lands requested. The current value of the Interest in Conservation Lands shall be calculated by determining the cost per acre of the affected Conservation Lands at the time of acquisition, and factoring in any increases in land value since acquisition, including general inflation of land values. If the net value of the land to be acquired to compensate for the requested Interest in Conservation Lands does not exceed the current value of the affected Conservation Lands, the difference shall be made up monetarily, and those funds shall be returned to the Conservation Lands Program.

4.03 Compensation pursuant to this Section for an Interest in Conservation Lands shall be provided before, or simultaneously with the conveyance of an Interest in Conservation Lands.

Section 5. EXEMPTIONS:

5.01 Conveyance of an Interest in Conservation Lands where the affected Conservation Lands were initially acquired for agricultural purposes as defined in Resolution 99-1073, subsection 5.03 A is exempt from this Ordinance.

5.02 Conveyance of an Interest in Conservation Lands at the time of, and as part of, the acquisition process is exempt from this Ordinance.

5.03 Conveyance of an Interest in Conservation Lands where the property that is the subject of the Interest was declared as surplus at the time the Lands were initially acquired is exempt from this Ordinance.

5.04 Conveyance of a conservation easement to a government or a non-profit conservation organization for the purpose of permanent preservation is exempt from this Ordinance.

Section 6. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances in conflict with any provision of this Ordinance are hereby repealed to the extent of any such conflict, except for local laws and ordinances that implement the bond issues authorized by the Environmentally Sensitive Lands Referendum (March 12, 1991) or the Land Acquisition for Conservation Purposes Referendum (March 9, 1999).

Section 7. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

Section 8. INCLUSION IN THE PALM BEACH COUNTY CODE:

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The Sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 9. EFFECTIVE DATE:

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the 21 day of October, 2003.

ATTEST:
DOROTHY H. WILKEN, CLERK

By: _____
Deputy Clerk

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Karen T. Marcus, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 28 day of October, 2003.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the Board of County Commissioners certify this to be a true and correct copy of the original filed in my office on October 21, 2003.
DATED at West Palm Beach, FL on 11/4/03.
DOROTHY H. WILKEN, Clerk
By: _____ D.C.